

**§ 79a. Weighing authority****(a) Official weighing in accordance with prescribed regulations**

The Secretary shall cause official weighing under standards or procedures provided for in section 76 of this title to be made of all grain required to be officially weighed as provided in section 77 of this title, in accordance with such regulations as the Secretary may prescribe.

**(b) Official weighing or supervision of weighing at grain elevators, warehouses, or other storage or handling facilities located other than at export elevators at export port locations**

The Secretary is authorized to cause official weighing or supervision of weighing under standards or procedures provided in section 76 of this title to be performed at any grain elevator, warehouse, or other storage or handling facility located other than at export elevators at export port locations at which official inspection is provided pursuant to the provisions of this chapter, in such manner as the Secretary deems appropriate and under such regulations as the Secretary may provide.

**(c) Personnel performing official weighing or supervision of weighing at locations at which official inspection is provided**

(1) With respect to official weighing or supervision of weighing for locations at which official inspection is provided by the Secretary, the Secretary shall cause such official weighing or supervision of weighing to be performed by official inspection personnel employed by the Secretary.

(2) With respect to official weighing or supervision of weighing for any location at which official inspection is provided other than by the Secretary, the Secretary is authorized, with respect to export port locations, to delegate authority to perform official weighing or supervision of weighing to the State agency providing official inspection service at such location, and with respect to any other location, to designate the agency or person providing official inspection service at such location to perform official weighing or supervision of weighing, if such agency or person qualifies for a delegation of authority or designation under section 79 of this title, except that where the term “official inspection” is used in such section it shall be deemed to refer to “official weighing” or “supervision of weighing” under this section. If such agency or person is not available to perform such weighing services, or the Secretary determines that such agency or person is not qualified to perform such weighing services, then (A) at export port locations official weighing or supervision of weighing shall be performed by official inspection personnel employed by the Secretary, and (B) at any other location, the Secretary is authorized to cause official weighing or supervision of weighing to be performed by official inspection personnel employed by the Secretary or designate any State or local governmental agency, or any person to perform official weighing or supervision of weighing, if such agency or person meets the same criteria that agencies must meet to be designated to perform official inspection as set out in section 79 of this title, except that where the term “official in-

spection” is used in such section it shall be deemed to refer to “official weighing” or “supervision of weighing” under this section. Delegations and designations made pursuant to this subsection shall be subject to the same provisions for delegations and designations set forth in subsection (g) of section 79 of this title.

**(d) Official weighing in Canadian ports**

The Secretary is authorized to cause official weighing under this chapter to be made, as provided in subsection (a) of section 77 of this title, in Canadian ports of United States export grain transshipped through Canada; and pursuant thereto the Secretary is authorized to enter into an agreement with the Canadian Government for such official weighing. All or specified functions of such weighing shall be performed by official inspection personnel employed by the Secretary or, except for appeals, by persons operating under a contract with the Secretary or as otherwise provided by agreement with the Canadian Government.

**(e) Official weighing or supervision of weighing upon request of operators of grain elevators, warehouses, or other storage or handling facilities**

The Secretary is further authorized to cause official weighing or supervision of weighing under standards or procedures provided for in section 76 of this title to be made at grain elevators, warehouses, or other storage or handling facilities not subject to subsection (a) or (b) of this section, upon request of the operator of such grain elevator, warehouse, or other storage or handling facility and in accordance with such regulations as the Secretary may prescribe.

**(f) Demonstrated willingness of operators of grain elevators, warehouses, or other storage or handling facilities to meet equipment and personnel requirements**

No official weighing or supervision of weighing shall be provided for the purposes of this chapter at any grain elevator, warehouse, or other storage or handling facility until such time as the operator of the facility has demonstrated to the satisfaction of the Secretary that the operator (1) has and will maintain, in good order, suitable grain-handling equipment and accurate scales for all weighing of grain at the facility, in accordance with the regulations of the Secretary; (2) will permit only competent persons with a reputation for honesty and integrity and who are approved by the Secretary to operate the scales and to handle grain in connection with weighing of the grain, in accordance with this chapter; (3) when weighing is to be done by persons other than official inspection personnel, will require such persons to operate the scales in accordance with the regulations of the Secretary and to require that each lot of grain for delivery from any railroad car, truck, barge, vessel, or other means of conveyance at the facility is entirely removed from such means of conveyance and delivered to the scales without avoidable waste or loss, and each lot of grain weighed at the elevator for shipment from the facility is entirely delivered to the means of conveyance for which intended, and without avoidable waste or loss, in accordance with the

regulations of the Secretary; (4) will provide all assistance needed by the Secretary for making any inspection or examination and carrying out other functions at the facility pursuant to this chapter; and (5) will comply with all other requirements of this chapter and the regulations hereunder.

**(g) Official certificates as evidence**

Official certificates setting out the results of official weighing or supervision of weighing, issued and not cancelled under this chapter, shall be received by all officers and all courts of the United States as prima facie evidence of the truth of the facts stated therein.

**(h) Weighing prohibited when not in accordance with prescribed procedures**

No State or local governmental agency or person shall weigh or state in any document the weight of grain determined at a location where official weighing is required to be performed as provided for in this section except in accordance with the procedures prescribed pursuant to this section.

**(i) Unauthorized weighing prohibited**

**(1) In general**

No State or local governmental agency or person other than an authorized employee of the Secretary shall perform official weighing or supervision of weighing for the purposes of this chapter except in accordance with the provisions of an unsuspended and unrevoked delegation of authority or designation by the Secretary as provided in this section or as otherwise provided in section 79(i) of this title and subsection (d) of this section.

**(2) Geographic boundaries for official agencies**

Not more than one designated official agency referred to in paragraph (1) or State agency delegated authority pursuant to subsection (c)(2) of this section to carry out the weighing provisions of this chapter shall be operative at the same time in any geographic area defined by the Secretary, except that, if the Secretary determines that the presence of more than one designated official agency in the same geographic area will not undermine the policy stated in section 74 of this title, the Secretary may—

(A) allow more than one designated official agency to carry out the weighing provisions within the same geographical area as part of a pilot program; and

(B) allow a designated official agency to cross boundary lines to carry out the weighing provisions in another geographic area if the Secretary also determines that—

(i) the current designated official agency for that geographic area is unable to provide the weighing services in a timely manner; or

(ii) a person requesting weighing services in that geographic area has not been receiving official weighing services from the current designated official agency for that geographic area.

**(j) Authority under United States Warehouse Act not limited**

The provisions of this section shall not limit any authority vested in the Secretary under the

United States Warehouse Act (39 Stat. 486, as amended; 7 U.S.C. 241 et seq.).

**(k) Access to elevators, warehouses, or their storage or handling facilities**

The representatives of the Secretary shall be afforded access to any elevator, warehouse, or other storage or handling facility from which grain is delivered for shipment in interstate or foreign commerce or to which grain is delivered from shipment in interstate or foreign commerce and all facilities therein for weighing grain.

**(l) Fees; establishment, amount, payment, etc.**

(1) The Secretary shall, under such regulations as the Secretary may prescribe, charge and collect reasonable fees to cover the estimated costs to the Secretary incident to the performance of the functions provided for under this section except as otherwise provided in paragraph (2) of this subsection. The fees authorized by this paragraph shall, as nearly as practicable, cover the costs of the Secretary incident to performance of its<sup>1</sup> functions related to weighing, including administrative and supervisory costs directly related thereto. Such fees shall be deposited into the fund created in section 79(j) of this title.

(2) Each agency to which authority has been delegated under this section and each agency or other person which has been designated to perform functions related to weighing under this section shall pay to the Secretary fees in such amount as the Secretary determines fair and reasonable and as will cover the costs incurred by the Secretary relating to supervision of the agency personnel and supervision by the Secretary of the Secretary's field office personnel incurred as a result of the functions performed by such agencies, except costs incurred under sections 79(g)(3), 85, 86, and 87c of this title. The fees shall be payable after the services are performed at such times as specified by the Secretary and shall be deposited in the fund created in section 79(j) of this title. Failure to pay the fee within thirty days after it is due shall result in automatic termination of the delegation or designation, which shall be reinstated upon payment, within such period as specified by the Secretary, of the fee currently due plus interest and any further expenses incurred by the Secretary because of such termination. The interest rate on overdue fees shall be as prescribed by the Secretary, but not less than the current average market yield on outstanding marketable obligations of the United States of comparable maturity, plus an additional charge of not to exceed 1 per centum per annum as determined by the Secretary, and adjusted to the nearest one-eighth of 1 per centum.

(3) The authority provided to the Secretary by paragraph (1) and the duties imposed by paragraph (2) on agencies and other persons described in such paragraph shall expire on September 30, 2005. After that date, the Secretary shall, under such regulations as the Secretary may prescribe, charge and collect reasonable fees to cover the estimated costs of official weighing and supervision of weighing except

<sup>1</sup> So in original. Probably should be "the Secretary's".

when the official weighing or supervision of weighing is performed by a designated official agency or by a State under a delegation of authority. The fees authorized by this paragraph shall, as nearly as practicable, cover the costs of the Secretary incident to its<sup>1</sup> performance of official weighing and supervision of weighing services in the United States and on United States grain in Canadian ports, excluding administrative and supervisory costs. The fees authorized by this paragraph shall be deposited into a fund which shall be available without fiscal year limitation for the expenses of the Secretary incident to providing services under this chapter.

(Aug. 11, 1916, ch. 313, pt. B, §7A, as added Pub. L. 94-582, §9, Oct. 21, 1976, 90 Stat. 2875; amended Pub. L. 95-113, title XVI, §§1602(b), 1604(e), 1606(e), Sept. 29, 1977, 91 Stat. 1025, 1027, 1030; Pub. L. 97-35, title I, §155(2), Aug. 13, 1981, 95 Stat. 371; Pub. L. 100-518, §2(2), Oct. 24, 1988, 102 Stat. 2585; Pub. L. 103-156, §§4(b), 5(b), 12(e), 14(b), Nov. 24, 1993, 107 Stat. 1526, 1528, 1530; Pub. L. 103-354, title II, §293(a)(4), (7), (8), Oct. 13, 1994, 108 Stat. 3237; Pub. L. 106-472, title I, §§102(b), 103(b), Nov. 9, 2000, 114 Stat. 2059, 2060.)

#### REFERENCES IN TEXT

The United States Warehouse Act, referred to in subsec. (j), is part C of act Aug. 11, 1916, ch. 313, 39 Stat. 486, as amended, which is classified generally to chapter 10 (§241 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 241 of this title and Tables.

#### AMENDMENTS

2000—Subsec. (i). Pub. L. 106-472, §102(b), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, struck out second sentence, which prohibited more than one official agency or State delegated authority from operating at one time in any geographic area except as permitted in pilot programs, and added par. (2).

Subsec. (l)(3). Pub. L. 106-472, §103(b), substituted “2005” for “2000” in first sentence.

1994—Pub. L. 103-354 substituted “supervision by the Secretary of the Secretary’s field office personnel” for “supervision by Service personnel of its field office personnel” in first sentence of subsec. (l)(2) and substituted “Secretary” for “Administrator” and “Service” wherever appearing in subssecs. (a) to (f) and (i) to (l).

1993—Subsec. (c)(2). Pub. L. 103-156, §4(b)(1), in second sentence, substituted “‘official weighing’ or ‘supervision of weighing’” for “‘supervision of weighing’”.

Subsec. (d). Pub. L. 103-156, §4(b)(2), inserted before period at end of second sentence “or as otherwise provided by agreement with the Canadian Government”.

Subsec. (e). Pub. L. 103-156, §12(e), which directed amendment of “Section 7A(e)” by substituting “regulations as the Administrator” for “regulations as he”, without specifying the name of the Act being amended, was executed to this section, which is section 7A of the United States Grain Standards Act, to reflect the probable intent of Congress.

Subsec. (i). Pub. L. 103-156, §§4(b)(3), 5(b), inserted before period at end of first sentence “or as otherwise provided in section 79(i) of this title and subsection (d) of this section” and inserted before period at end of second sentence “, except that the Administrator may conduct pilot programs to allow more than 1 official agency to carry out the weighing provisions within a single geographic area without undermining the policy stated in section 74 of this title”.

Subsec. (l)(3). Pub. L. 103-156, §14(b), added par. (3).

1988—Subsec. (l). Pub. L. 100-518 amended subsec. (l) generally, substituting “cover the costs of the Service” for “cover the costs of the service” in par. (1).

1981—Subsec. (l). Pub. L. 97-35 temporarily designated existing provisions as par. (1), made changes in nomenclature, provided for inclusion, rather than exclusion, of administrative and supervisory costs, and struck out provisions respecting availability of deposited funds, and added par. (2). See Effective and Termination Dates of 1981 Amendment note below.

1977—Subsec. (a). Pub. L. 95-113, §1606(e), substituted “standards or procedures” for “standards”.

Subsec. (b). Pub. L. 95-113, §§1604(e)(1), 1606(e), substituted “The Administrator is authorized to cause official weighing or supervision of weighing under standards or procedures” for “The Administrator is authorized to cause supervision of weighing under standards” and “other than at export elevators at export port locations” for “other than at export port locations”.

Subsec. (c)(2). Pub. L. 95-113, §1604(e)(2), made technical amendments to conform par. (2) to increased authority granted in subsec. (b) to cause official weighing as well as supervision of weighing at interior inspection points and corrected a typographical error in which “number” had been erroneously used for “under” in text as originally enacted by Pub. L. 94-582.

Subsec. (d). Pub. L. 95-113, §1604(e)(3), inserted requirement that all or specified functions of Canadian weighing be performed by official inspection personnel employed by the Service or, except for appeals, by persons operating under a contract with the Service.

Subsec. (e). Pub. L. 95-113, §§1604(e)(4), 1606(e), substituted “under standards or procedures provided” for “under standards provided” and struck out provisions which had required that the weighing service not be provided for periods of less than a year, that the fees therefor be set separately from the fees provided for in subsec. (l), and that they be reasonable, nondiscriminatory, and equal, as nearly as possible, to the cost of providing the service.

Subsec. (f)(2). Pub. L. 95-113, §1604(e)(5)(A), substituted “permit only competent persons with a reputation for honesty and integrity and who are approved by the Administrator” for “employ only competent persons with a reputation for honesty and integrity”.

Subsec. (f)(3). Pub. L. 95-113, §1604(e)(5)(B), substituted “when weighing is to be done by persons other than official inspection personnel, will require such persons to operate the scales” for “when weighing is to be done by employees of the facility, will require employees to operate the scales”.

Subsec. (g). Pub. L. 95-113, §1604(e)(6), substituted “official weighing or supervision of weighing” for “official weighing”.

Subsec. (i). Pub. L. 95-113, §1604(e)(7), (8), substituted “No State or local governmental agency” for “No State” and inserted provision that not more than one official agency or State delegated authority pursuant to subsection (c)(2) of this section for carrying out the weighing provisions of this chapter be operative at one time for any geographic area as determined by the Administrator to effectuate the objectives stated in section 74 of this title.

Subsec. (l). Pub. L. 95-113, §1602(b), revised provisions relating to fees so as to remove requirement that field supervision of weighing be supported by fees.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 103(b) of Pub. L. 106-472 effective as if enacted Sept. 30, 2000, see section 111 of Pub. L. 106-472, set out as a note under section 79 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

That part of section 2 of Pub. L. 100-518 which provided that the amendment made by Pub. L. 100-518 was effective for period Oct. 1, 1988, through Sept. 30, 1993, inclusive, was repealed by Pub. L. 103-156, §§13(a), 16(b), Nov. 24, 1993, 107 Stat. 1529, 1530, eff. Sept. 30, 1993.

#### EFFECTIVE AND TERMINATION DATES OF 1981 AMENDMENT

Section 155 of Pub. L. 97-35, as amended by Pub. L. 98-469, §1, Oct. 11, 1984, 98 Stat. 1831, provided that the

amendment made by Pub. L. 97-35 is effective for period beginning Oct. 1, 1981, and ending Sept. 30, 1988.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-113 effective Oct. 1, 1977, see section 1901 of Pub. L. 95-113, set out as a note under section 1307 of this title.

#### EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1976, see section 27 of Pub. L. 94-582, as amended, set out as an Effective Date of 1976 Amendment note under section 74 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 75, 84, 87, 87b, 87e, 87h of this title.

### § 79b. Testing of equipment

#### (a) Random and periodic testing at least annually; fees

The Secretary shall provide for the testing of all equipment used in the sampling, grading, inspection, and weighing for the purpose of official inspection, official weighing, or supervision of weighing of grain located at all grain elevators, warehouses, or other storage or handling facilities at which official inspection or weighing services are provided under this chapter, to be made on a random and periodic basis, under such regulations as the Secretary may prescribe, as the Secretary deems necessary to assure the accuracy and integrity of such equipment. Such regulations shall provide for the charging and collection of reasonable fees to cover the estimated costs to the Secretary incident to the performance of such testing by employees of the Secretary. Such fees shall be deposited into the fund created by section 79(j) of this title.

#### (b) Personnel to conduct testing

The Secretary is authorized to cause such testing provided for in subsection (a) of this section to be performed (1) by personnel employed by the Secretary, or (2) by States, political subdivisions thereof, or persons under the supervision of the Secretary, under such regulations as the Secretary may prescribe.

#### (c) Use of non-approved equipment prohibited

Notwithstanding any other provision of law, no person shall use for the purposes of this chapter any such equipment not approved by the Secretary.

(Aug. 11, 1916, ch. 313, pt. B, § 7B, as added Pub. L. 94-582, § 9, Oct. 21, 1976, 90 Stat. 2877; amended Pub. L. 95-113, title XVI, § 1604(f), Sept. 29, 1977, 91 Stat. 1028; Pub. L. 103-156, § 12(f), Nov. 24, 1993, 107 Stat. 1528; Pub. L. 103-354, title II, § 293(a)(7), (8), Oct. 13, 1994, 108 Stat. 3237; Pub. L. 106-472, title I, § 104, Nov. 9, 2000, 114 Stat. 2060.)

#### AMENDMENTS

2000—Subsec. (a). Pub. L. 106-472 struck out “but at least annually and” before “under such regulations” in first sentence.

1994—Pub. L. 103-354 substituted “Secretary” for “Administrator” and “Service” wherever appearing.

1993—Subsec. (a). Pub. L. 103-156, which directed amendment of “Section 7B(a)” by substituting “as the Administrator deems necessary” for “as he deems necessary”, without specifying the name of the Act being

amended, was executed to this section, which is section 7B of the United States Grain Standards Act, to reflect the probable intent of Congress.

1977—Subsec. (a). Pub. L. 95-113, § 1604(f)(1), (2), substituted “and weighing for the purpose of official inspection, official weighing, or supervision of weighing of grain located at all grain elevators” for “and weighing of grain located at all grain elevators” and inserted provisions that regulations provide for the charging and collection of reasonable fees to cover the estimated costs to the Service incident to the performance of testing by employees of the Service and that the fees be deposited into the fund created by section 79(j) of this title.

Subsec. (c). Pub. L. 95-113, § 1604(f)(3), substituted “shall use for the purposes of this chapter” for “shall use”.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-113 effective Oct. 1, 1977, see section 1901 of Pub. L. 95-113, set out as a note under section 1307 of this title.

#### EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1976, see section 27 of Pub. L. 94-582, as amended, set out as an Effective Date of 1976 Amendment note under section 74 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 87b, 87e, 87h of this title.

### § 79c. Omitted

#### CODIFICATION

Section, act Aug. 11, 1916, ch. 313, pt. B, § 7C, as added Aug. 13, 1981, Pub. L. 97-35, title I, § 155(3), 95 Stat. 372; amended Oct. 11, 1984, Pub. L. 98-469, § 2(2), 98 Stat. 1831, which limited the total administrative and supervisory costs which could be incurred under this chapter for fiscal years 1982 through 1988, was effective for the period Oct. 1, 1981, through Sept. 30, 1988, pursuant to section 155 of Pub. L. 97-35, as amended. See section 79d of this title.

### § 79d. Limitation on administrative and supervisory costs

The total administrative and supervisory costs which may be incurred under this chapter for services performed (excluding standardization, compliance, and foreign monitoring activities) for each of the fiscal years 1989 through 2005 shall not exceed 30 percent of the total costs for such activities carried out by the Secretary for such year.

(Aug. 11, 1916, ch. 313, pt. B, § 7D, as added Pub. L. 100-518, § 2(3), Oct. 24, 1988, 102 Stat. 2585; amended Pub. L. 103-156, § 2, Nov. 24, 1993, 107 Stat. 1525; Pub. L. 103-354, title II, § 293(a)(8), Oct. 13, 1994, 108 Stat. 3237; Pub. L. 106-472, title I, § 105, Nov. 9, 2000, 114 Stat. 2060.)

#### AMENDMENTS

2000—Pub. L. 106-472 substituted “2005” for “2000” and “30 percent” for “40 per centum”.

1994—Pub. L. 103-354 substituted “Secretary” for “Service”.

1993—Pub. L. 103-156 substituted “services performed” for “inspection and weighing” and “2000” for “1993”.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-472 effective as if enacted Sept. 30, 2000, see section 111 of Pub. L. 106-472, set out as a note under section 79 of this title.